

ADVISORY OPINION 95-003

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

March 11, 1995

Ms. Robin Walter, Treasurer
Don Bell for State Auditor
P.O. Box 364
Buckner, Kentucky 40010

Dear Ms. Walter:

This is in response to your February 7, 1995, letter in which you request an advisory opinion regarding whether the Don Bell Campaign Fund may accept contributions from individuals with Visa and MasterCard as a method of payment. You further state that any service fees for the transaction would be charged to the campaign account, that copies of the transaction would be kept as a permanent record, and that the bank would provide a detailed statement of the credit card transaction in addition to the monthly bank statement. As your campaign is subject to the provisions of KRS Chapter 121, we have reviewed the applicable statutes relating to contributions and any restrictions which might be pertinent to your question.

KRS 121.150(4) provides that:

No candidate, committee, or contributing organization, nor anyone on their behalf, shall accept a cashier's check or money order in excess of the maximum cash contribution limit unless the instrument clearly identifies both the payor and the payee. A contribution made by check or money order which identifies both the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in this section. (Emphasis added).

In contrast to KRS 121A.010(4) which provides specific guidelines for qualifying contributions for gubernatorial slates, we find no other provision in KRS Chapter 121 which further defines, limits, or describes the method of payment for qualifying contributions. KRS 121.1509 prohibits acceptance of cash over \$50 and cashier's checks or money orders unless the instrument identifies the payor or the payee. The statute further provides that a cashier's check or money order which identifies the payor and payee will be treated as a "check." Although the statute does not specify the type of check, its context implies a "personal check." KRS 355.3-104 defines a "check" as a "draft drawn on a bank and payable on demand." A cashier's check may be considered cash if there is no substantial nexus between the individual contributor and the check (OAG 75-159). See also 32 KAR 2:130.

The overriding intent of the statute appears to prohibit cash or other methods of payment for contributions which do not identify the contributor or the candidate. Therefore, in the absence of any express or implied statutory prohibition for credit card transactions or any express provision of KRS Chapter 121 enumerating those acceptable methods of payment for contributions, we believe that

payment of an otherwise valid contribution by Visa and MasterCard would be acceptable and would not violate the spirit of KRS Chapter 121 as long as the credit card slip provides the same information as that contained on a personal check. This would include the payor and the payee and the date of the contribution. Although credit card slips are not considered negotiable instruments, as are checks, the practical distinction between checks and credit cards is becoming less significant.

You should also be advised that all reporting obligations remain with the campaign and that any usual and customary service charges of the credit card company must be paid by the campaign to avoid any prohibitions against corporate contributions.

Sincerely,

Rosemary F. Center
General Counsel

RFC/db